IN THE

Supreme Court of the United States.

OCTOBER TERM, 1950.

No. 5, ORIGINAL.

STATE OF NEW JERSEY,
Complainant,

vs.

STATE OF NEW YORK AND CITY OF NEW YORK,
Defendants,

COMMONWEALTH OF PENNSYLVANIA,
Intervenor.

MOTION OF THE COMMONWEALTH OF PENNSYLVANIA FOR LEAVE TO FILE AMENDED ANSWER.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Now comes the Commonwealth of Pennsylvania (intervenor in the above case), by Robert E. Woodside, its Attorney General, and respectfully represents that:

1. It has heretofore filed its separate answer to the petition of the City of New York to amend the decree of this Court entered on May 25, 1931 at October Term, 1930, No. 16, original.

2. It desires to amend its answer by adding thereto, for the purpose of clarifying its position, paragraphs 31, 32, 33 and 34, and also paragraph 35 to question this Court's jurisdiction to entertain the petition of the City of New York.

3. It notified the Special Master and Counsel for all other parties by writing dated August 15, 1952, of its desire to add to its answer Paragraphs 31, 32, 33 and 34, and it notified the Special Master and Counsel for all other parties orally on December 3, 1952, of its desire to add Paragraph 35.

4. While there have been informal pre-trial proceedings before the Special Master, the hearings have not yet begun and are not scheduled to begin until February 15, 1953.

5. The States of New Jersey and New York and the City of New York, being all of the other parties to this proceeding, have consented to the filing of an amended answer by intervenor.

6. The intervenor's proposed amended answer is hereto annexed.

WHEREFORE, intervenor moves that it may be allowed to file the aforesaid amended answer.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA,
Intervenor.
By ROBERT E. WOODSIDE,
Attorney General.
GEORGE G. CHANDLER,
BERNARD G. SEGAL,
Special Counsel and Solicitors for the Commonwealth of Pennsylvania, Intervenor.

Of Counsel:

WM. A. SCHNADER,
HARRY F. STAMBAUGH,
Special Counsel to Intervenor.

COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA, } *ss.:*

ROBERT E. WOODSIDE, being duly sworn according to law, deposes and says that he is the Attorney General of the Commonwealth of Pennsylvania; that he is duly authorized to take this affidavit on its behalf; that he has read the foregoing motion; and that the averments thereof so far as they are within his personal knowledge are true and correct, and that in so far as they are upon information and belief, he believes them to be true and correct.

ROBERT E. WOODSIDE.

Sworn to and subscribed before me this 27th day of December, 1952.

ERNESTINE G. LEWIS,
Notary Public.

(Seal)

My commission expires January 4, 1953.

IN THE

Supreme Court of the United States.

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No. 5, ORIGINAL.

STATE OF NEW JERSEY,
Complainant,

vs.

STATE OF NEW YORK AND CITY OF NEW YORK,
Defendants,

COMMONWEALTH OF PENNSYLVANIA,
Intervenor.

AMENDED SEPARATE ANSWER OF THE COMMONWEALTH OF PENNSYLVANIA TO PETITION OF CITY OF NEW YORK TO AMEND DECREE.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Now comes the Commonwealth of Pennsylvania (hereinafter called "intervenor"), by Robert E. Woodside, its Attorney General, and in answer to the petition of the City of New York (hereinafter called "the petition") represents that by order of this Honorable Court dated January 6, 1930, it was permitted in the action between the State of New Jersey, Complainant, and the State of New York and City of New York, Defendants, at October Term, 1930, Original No. 16, to intervene in its own right and to participate in any and all proceedings and hearings, offering such evidence as it considered necessary, appropriate and

relevant, and now makes answer to the City of New York (hereinafter called "petitioner") in the above cause as follows:

1. Intervenor admits that petitioner seeks modification of the decree of this Court as averred in paragraph 1 of the petition.

2. Intervenor admits that the decree of this Court was as set forth in paragraph 2 of the petition.

3. Intervenor admits the averments of paragraph 3 of the petition, subject to the following qualifications:

(a) Intervenor admits that petitioner originally planned to take 600 million gallons per day from the Delaware River or its tributaries and requested the Special Master and this Court to allocate that amount to it as its fair and equitable share. However, the Special Master found and this Court affirmed his finding that the proposed diversion of 600 million gallons daily by petitioner was excessive and would cause serious injury, and consequently reduced New York's permissible diversion to 440 million gallons daily. Pursuant to this limitation, New York modified its then proposed plan and has since proceeded with new plans to take only 440 million gallons of water daily from the Neversink River and the east branch of the Delaware River.

(b) Pennsylvania alone requested the Special Master to recommend to this Court that jurisdiction be retained in order that it might subsequently petition this Court for its fair and equitable share of Delaware River water when a definite plan had been adopted and approved for Philadelphia and southeastern Pennsylvania to move upstream for their water supply, and also to modify the Pennsylvania plan for impounding waters of the Delaware River during periods of high flow and

releasing the same during periods of low flow, should such plan require modification in the future.

(c) Both the State of New York and the City of New York filed exceptions to the finding of the Special Master that the diversion of Delaware River water by New York State and City should be limited to 440 million gallons daily upon the ground that such limitation was inadequate to meet the future water needs of the State and City of New York. In support of their exception, both the State and City of New York averred that, although they had made no threat and had no intention or purpose of diverting water in excess of the proposed 600 million gallons daily, yet the time might come when the City of New York or some other municipality or group of municipalities of the State of New York might desire to divert additional waters from the Delaware and that, therefore, they were most anxious not to be bound by the present decree from raising this question at some future date. These exceptions were dismissed by this Court, which affirmed the limitation of 440 million gallons daily imposed by the Special Master.

(d) The report of the Special Master and the opinion and decree of this Court speak for themselves.

4. Intervenor admits that this Court retained jurisdiction over this cause, but denies that such jurisdiction was of the entire controversy, because the finding by the Special Master and this Court that the fair and equitable share of Delaware River water for the State and City of New York should be limited to 440 million gallons daily was definite and final, and was not one of the issues left open for future modification.

5. Intervenor admits that since 1931, the consumption and use of water in the City of New York has been increasing, but avers that the consumption and use of water in

southeastern Pennsylvania has been increasing to an even greater extent. It denies that the consumption and use in the City of New York has reached the critical point as averred in paragraph 5 of the petition, and calls attention to the fact that, as the petitioner sets forth in paragraph 8 of the petition, it has not yet put into use the facilities constructed pursuant to permission accorded it by this Court's 1931 decree to divert into another watershed the equivalent of 440 million gallons daily from the Delaware River or its tributaries. Further, intervenor avers on information and belief that, by metering, by reduction of leakage and waste and by compelling a more efficient use of water by certain large users of water, petitioner could effect a saving of at least 200 million gallons daily out of its existing water consumption. Further, intervenor avers that, while it is true that the population of New York City increased 5.9% during the ten-year period ending in 1950, the population of the City of Philadelphia increased during the same period 7.3%; that, while the population in the Greater New York Area increased during the same period by 10.7%, the population in the Greater Philadelphia Area increased by 13.3%. Further answering, intervenor avers that, while, undoubtedly, there has been industrial expansion in the New York City area, such expansion is far less than the industrial expansion which has occurred in the Philadelphia area and particularly in the counties adjacent thereto which must depend almost entirely on the Delaware River for their supply of water for industrial purposes.

6. Intervenor is without information sufficient to enable it to admit or deny the present dependable, safe yield of the water system of the petitioner, but avers that if the dependable, safe yield is presently 1120 million gallons of water per day, that yield will be increased by 440 million gallons per day when the reservoirs to which reference is made in paragraph 8 of the petition are placed in operation as forecast in that paragraph. This will bring the depend-

able, safe yield of the system up to 1560 million gallons of water per day.

7. Intervenor is without information sufficient to enable it to admit or deny that the actual use of water by petitioner, including water supplied to outside communities since the year 1945, is as set forth in paragraph 7 of the petition, but avers that, if the use is as there set forth, the use could have been reduced approximately 200 million gallons per day by metering and other economies as heretofore averred. Further, it avers that the droughts of 1949 and 1950 were extremely unusual and that the rainfall since 1950 has restored to normal the average storage in existing reservoirs.

8. On information and belief, intervenor admits the averments of paragraph 8 of the petition, and it avers that upon the taking by petitioner of 440 million gallons daily, it will have exhausted its fair and equitable share of Delaware River water.

9. On information and belief, intervenor denies that the needs of petitioner will be such that a severe and steadily intensifying water shortage can reasonably be expected about the year 1967 onward as averred in paragraph 9 of the petition.

10. Intervenor denies the averment of paragraph 10 of the petition.

11-14. Intervenor is without information sufficient to enable it to admit or deny the averments of paragraphs 11 to 14 of the petition, and in any event asserts that these averments are immaterial.

15. On information and belief, intervenor denies that the plan described in paragraphs 11 to 14 of the petition is the most feasible and practical plan that will most economically supply the additional pure and wholesome water allegedly required for the future water supply needs of peti-

tioner. On the contrary, intervenor avers that New York City is within the watershed of the Hudson River Basin, and that any needs of petitioner, supplemental to its present water supply when increased by the 440 million gallons daily of Delaware River water which it will derive from the projects set forth in paragraph 8 of the petition, can be procured feasibly, practically and more economically from the Hudson River Basin. The plan to which reference is made in paragraph 15 of the petition as the Third Stage of the Delaware Project is an integral part of the plan submitted to the Special Master and to this Court in the former proceedings in this case, and which was rejected both by the Special Master and this Court. The taking of any additional water required by petitioner from the Hudson River can be readily and efficiently integrated with and will form a natural extension of the existing water supply facilities of petitioner.

16. Intervenor denies the averments of paragraph 16 of the petition.

17-18. Intervenor avers that under reciprocal legislation between New Jersey, New York and Pennsylvania (Chapter 58, Section 18-1, New Jersey Statutes, 1944; New York Laws 1943, Chapter 709; Pennsylvania Act of May 21, 1943, P. L. 422), before the New York Water Power and Control Commission could lawfully consider the plan and project submitted to it, the latter was required to give notice to the Water and Power Resources Board of Pennsylvania and to the board or commission of New Jersey corresponding to the two named boards of New York and Pennsylvania. No such notice was given to the Water and Power Resources Board of Pennsylvania, nor was any opportunity afforded to such board to present testimony and arguments in accordance with Chapter 709 of the New York Laws of 1943.

19. Intervenor admits that petitioner seeks a modification of the formula contained in this Court's decree of May

25, 1931, but denies that there should be a modification of the formula. Intervenor avers that the reservoirs now being built as averred in paragraph 8 of the petition have not as yet been put into operation, and that for this reason the formula contained in this Court's decree has not as yet been put to a test. It is premature to ask that the formula be modified until the practical results of the formula can be ascertained from the actual working thereof.

20. Intervenor admits that the formula in this Court's decree is as quoted in paragraph 20 of the petition.

21. Intervenor admits that petitioner seeks modification of the water release formula contained in this Court's decree of May 25, 1931, by substituting the formula contained in paragraph 21 of the petition. It avers that the formula stated in the petition is substantially the formula contained in the reciprocal legislation between New Jersey, New York and Pennsylvania, to which reference was made in the answer to paragraphs 17-18. The formula appears in Section 6 of the Pennsylvania Act of May 21, 1943, P. L. 422. However, intervenor avers that reciprocal legislation relating to the controlled rate of the natural flow of an interstate navigable river and its waters constitutes a compact between the states enacting such reciprocal legislation, and as such, requires as a prerequisite to its validity, the approval of the Congress of the United States. No such approval has been given to the reciprocal legislation to which reference has been made. By the express terms and provisions of these reciprocal acts, rights existing at the time of their passage to divert waters from the Delaware River were not to be impaired or affected, and this statutory preservation of existing rights applied to the rights determined by this Court by its decree of May 25, 1931.

22. Intervenor has no information sufficient to enable it to form an opinion as to whether a substitution of the water release formula set forth in paragraph 21 of the peti-

tion for the water release formula contained in this Court's decree of May 25, 1931, will require petitioner to release more water as set forth in paragraph 22 of the petition, especially for the reason that the averment is made, as intervenor understands it, upon the assumption that this Court will permit petitioner to increase its diversion from the Delaware River as requested in the petition. Furthermore, intervenor avers that petitioner should not be relieved of responsibility in connection with any diversion from the Delaware River or its tributaries originating downstream from the dams and reservoirs of petitioner for the reason that, as a result of the diversion of 440 million gallons daily from the watershed of the Delaware River, the conditions at the dams and downstream from the dams are inseparable; and there is a duty imposed by the decree of this Court upon every diverter of Delaware River water to participate in the protection of the entire river from any injurious effect of any diversion.

23. Intervenor is unable to admit or deny the averments of paragraph 23 of the petition except as they relate to Pennsylvania; and without further information, intervenor is unable to concede that the released water formula proposed by the petitioner is and would be preferable to the existing water release formula contained in this Court's decree. Intervenor further avers that the formula prescribed by this Court in its decree of May 25, 1931 was formulated to meet the present and reasonable future water needs of all three states, and that the petition does not on its face show that any change in that formula is necessary for the present.

24. Intervenor admits the averment of paragraph 24 of the petition.

25. Further answering, intervenor avers that above the Delaware-Pennsylvania State Line, the Delaware River drains an area of 10,444 square miles, of which total, 2389

square miles are within the State of New York, 1979 square miles are within the State of New Jersey, and the remaining 6076 square miles are within the Commonwealth of Pennsylvania. It is apparent that the Commonwealth of Pennsylvania is entitled to paramount consideration in apportioning the waters of the Delaware River.

26. Further answering, intervenor avers that there are located in the basin and watershed area of the Delaware River many cities, towns and villages, as well as vast agricultural and industrial areas. This great agricultural, industrial and municipal community has shown a substantial and continuous growth over a period of many years which was intensified during World War II, and is now being tremendously increased by the erection of great steel mills and other manufacturing concerns at and in the neighborhood of Morrisville, Pennsylvania. It is of vital importance to the continued growth and prosperity of southeastern Pennsylvania that the waters of the Delaware River shall be available in adequate quantity and suitable quality for the future reasonable water needs and requirements thereof.

27. Further answering, intervenor avers that the City of Philadelphia, which is the third city in population in the United States, has for many years obtained the major part of its water supply from the Delaware River; that the growth of the City has been continuous; and that the City will necessarily depend more and more upon the waters of the Delaware River Basin for its constantly increasing demands for water for domestic, municipal, sanitary, industrial and power purposes. New York City, by its petition, seeks almost to double its diversion of the purest and best water of the entire watershed, the result of which will necessarily be an impairment of the quality as well as a lessening of the quantity of the water of the Delaware River all the way to tidewater.

28. Further answering, intervenor avers that the Delaware River Basin comprises a water supply area that is competitive because it is available to all four bordering states and the amount of water divertible therefrom without injury must be definitely limited. Intervenor has always insisted that the waters of this basin must be fairly and equitably apportioned between the states in accordance with their present and reasonable future needs; and further that New York should not be permitted to take more than its fair and equitable share to the detriment and irreparable damage of Pennsylvania.

29. Further answering, intervenor avers that this Court by its decree of May 25, 1931, held that the allowance of 440 million gallons daily of Delaware River water to the State and City of New York did not constitute a prior appropriation and did not give the State and City of New York any superiority of right over the Commonwealth of Pennsylvania and the State of New Jersey in their enjoyment and use of the Delaware River and its tributaries.

30. Further answering, intervenor avers that, subsequent to the entry of this Court's decree of May 25, 1931, the comparative situation as between New York and Pennsylvania has not changed in favor of permitting a greater diversion to New York than that heretofore allowed by this Court, but that, if anything, the changed situation indicates that the petitioner should not have been permitted to divert to another watershed as much as 440 million gallons daily.

31. Further answering, intervenor avers that it would be substantially damaged if New York were permitted to divert additional water from the tributaries of the Delaware River, more particularly the additional quantity of 360 million gallons daily, or any part thereof, for the reasons that (a) the total amount of water which can safely be diverted by all of the states which border on the river is definitely limited; (b) Pennsylvania's fair and equitable

share of the water of the river, in order to meet its present and reasonable future needs, is 900 million gallons daily or more; and (c) the aggregate of more than 440 million gallons daily for New York, at least 900 million gallons daily for Pennsylvania, and such amount as represents the fair and equitable share of New Jersey, would be a greater quantity of water than could be diverted from the Delaware River without causing substantial damage.

32. Further answering, intervenor avers that the taking of more than 440 million gallons daily of Delaware River water by the City and State of New York will prevent intervenor from taking and receiving its fair and equitable share of such water, which share is assured to intervenor under this Court's decree of May 25, 1931.

33. Further answering, intervenor avers that if New York City and State were permitted to take more than their allotted share of 440 million gallons daily of Delaware River water, any such additional taking would cause substantial injury to intervenor by adversely affecting both the quantity and the quality of water available to its citizens from the Delaware River and its tributaries for the purposes of water supply, industrial use, sanitation, recreational use, and otherwise.

34. Further answering, intervenor avers that by reason of the aforesaid injuries from any increased taking of water from the interstate Delaware River by the City and State of New York over and above the 440 million gallons daily allotted under the decree of May 25, 1931, the principle laid down in the report of the Special Master, which principle he stated was analogous to the general equity principle of the marshaling of assets, should now be applied to the present case, and the City and State of New York should be directed to meet any additional need for water from the available sources of water in the intra-state Hudson River watershed.

35. Under the Eleventh Amendment to the Constitution of the United States, this Court lacks jurisdiction to entertain the Petition of the City of New York, because the Petitioner is a citizen of one State asking affirmative relief in equity against other sovereign states of the United States, in that in seeking the right to divert a quantity of 800 million gallons daily of water from the Delaware River watershed, it is taking a new position not presented to or passed upon by the Supreme Court of the United States in the prior proceeding.

WHEREFORE, the Commonwealth of Pennsylvania, Intervenor herein, respectfully petitions this Court to dismiss the petition of the City of New York.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA,
Intervenor.
By ROBERT E. WOODSIDE,
Attorney General.
GEORGE G. CHANDLER,
BERNARD G. SEGAL,
Special Counsel and Solicitors for the Commonwealth of Pennsylvania, Intervenor.

Of Counsel:

WM. A. SCHNADER,
HARRY F. STAMBAUGH,
Special Counsel to Intervenor.

COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA, } *ss.:*

ROBERT E. WOODSIDE, being duly sworn according to law, deposes and says that he is the Attorney General of the Commonwealth of Pennsylvania; that he is duly authorized to make this affidavit on its behalf; that he has read the foregoing amended answer; and that the averments thereof so far as they are within his personal knowledge are true and correct, and that in so far as they are upon information and belief, he believes them to be true and correct.

ROBERT E. WOODSIDE.

Sworn to and subscribed before me this 27th day of December, 1952.

ERNESTINE G. LEWIS,
Notary Public.

(Seal)

My Commission expires January 4, 1953.

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FILED
MAY 15 1952
CHARLES

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SEPARATE ANSWER OF THE COMMONWEALTH OF PENNSYLVANIA TO PETITION OF CITY OF NEW YORK TO AMEND DECREE.

ROBERT E. WOODSIDE,
Attorney General of Pennsylvania,

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Of Counsel:
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International, 236 Chestnut St., Phila. 6, Pa.

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relevant, and now makes answer to the City of New York (hereinafter called "petitioner") in the above cause as follows:

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2. Intervenor admits that the decree of this Court was as set forth in paragraph 2 of the petition.

3. Intervenor admits the averments of paragraph 3 of the petition, subject to the following qualifications:

(a) Intervenor admits that petitioner originally planned to take 600 million gallons per day from the Delaware River or its tributaries and requested the Special Master and this Court to allocate that amount to it as its fair and equitable share. However, the Special Master found and this Court affirmed his finding that the proposed diversion of 600 million gallons daily by petitioner was excessive and would cause serious injury, and consequently reduced New York's permissible diversion to 440 million gallons daily. Pursuant to this limitation, New York modified its then proposed plan and has since proceeded with new plans to take only 440 million gallons of water daily from the Neversink River and the east branch of the Delaware River.

(b) Pennsylvania alone requested the Special Master to recommend to this Court that jurisdiction be retained in order that it might subsequently petition this Court for its fair and equitable share of Delaware River water when a definite plan had been adopted and approved for Philadelphia and southeastern Pennsylvania to move upstream for their water supply; and also to modify the Pennsylvania plan for impounding waters of the Delaware River during periods of high flow and

releasing the same during periods of low flow, should such plan require modification in the future.

(c) Both the State of New York and the City of New York filed exceptions to the finding of the Special Master that the diversion of Delaware River water by New York State and City should be limited to 440 millions gallons daily upon the ground that such limitation was inadequate to meet the future water needs of the State and City of New York. In support of their exception, both the State and City of New York averred that, although they had made no threat and had no intention or purpose of diverting water in excess of the proposed 600 million gallons daily, yet the time might come when the City of New York or some other municipality or group of municipalities of the State of New York might desire to divert additional waters from the Delaware, and that, therefore, they were most anxious not to be bound by the present decree from raising this question at some future date. These exceptions were dismissed by this Court, which affirmed the limitation of 440 million gallons daily imposed by the Special Master.

(d) The report of the Special Master and the opinion and decree of this Court speak for themselves.

4. Intervenor admits that this Court retained jurisdiction over this cause, but denies that such jurisdiction was of the entire controversy, because the finding by the Special Master and this Court that the fair and equitable share of Delaware River water for the State and City of New York should be limited to 440 million gallons daily was definite and final, and was not one of the issues left open for future modification.

5. Intervenor admits that since 1931, the consumption and use of water in the City of New York has been increas-

ing, but avers that the consumption and use of water in southeastern Pennsylvania has been increasing to an even greater extent. It denies that the consumption and use in the City of New York has reached the critical point as averred in paragraph 5 of the petition, and calls attention to the fact that, as the petitioner sets forth in paragraph 8 of the petition, it has not yet put into use the facilities constructed pursuant to permission accorded to it by this Court's 1931 decree to divert into another watershed the equivalent of 440 million gallons daily from the Delaware River or its tributaries. Further, intervenor avers on information and belief that, by metering, by reduction of leakage and waste and by compelling a more efficient use of water by certain large users of water, petitioner could effect a saving of at least 200 million gallons daily out of its existing water consumption. Further, intervenor avers that, while it is true that the population of New York City increased 5.9% during the ten-year period ending in 1950, the population of the City of Philadelphia increased during the same period 7.3%; that, while the population in the Greater New York Area increased during the same period by 10.7%, the population in the Greater Philadelphia Area increased by 13.3%. Further answering, intervenor avers that, while, undoubtedly, there has been industrial expansion in the New York City area, such expansion is far less than the industrial expansion which has occurred in the Philadelphia area and particularly in the counties adjacent thereto which must depend almost entirely on the Delaware River for their supply of water for industrial purposes.

6. Intervenor is without information sufficient to enable it to admit or deny the present dependable, safe yield of the water system of the petitioner, but avers that if the dependable, safe yield is presently 1120 million gallons of water per day, that yield will be increased by 440 million gallons per day when the reservoirs to which reference is made in paragraph 8 of the petition are placed in operation

as forecast in that paragraph. This will bring the dependable, safe yield of the system up to 1560 million gallons of water per day.

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8. On information and belief, intervenor admits the averments of paragraph 8 of the petition, and it avers that upon the taking by petitioner of 440 million gallons daily, it will have exhausted its fair and equitable share of Delaware River water.

9. On information and belief, intervenor denies that the needs of petitioner will be such that a severe and steadily intensifying water shortage can reasonably be expected about the year 1967 onward as averred in paragraph 9 of the petition.

10. Intervenor denies the averment of paragraph 10 of the petition.

11-14. Intervenor is without information sufficient to enable it to admit or deny the averments of paragraphs 11 to 14 of the petition, and in any event asserts that these averments are immaterial.

15. On information and belief, intervenor denies that the plan described in paragraphs 11 to 14 of the petition is

the most feasible and practical plan that will most economically supply the additional pure and wholesome water allegedly required for the future water supply needs of petitioner. On the contrary, intervenor avers that New York City is within the watershed of the Hudson River Basin, and that any needs of petitioner, supplemental to its present water supply when increased by the 440 million gallons daily of Delaware River water which it will derive from the projects set forth in paragraph 8 of the petition, can be procured feasibly, practically and more economically from the Hudson River Basin. The plan to which reference is made in paragraph 15 of the petition as the Third Stage of the Delaware Project is an integral part of the plan submitted to the Special Master and to this Court in the former proceedings in this case, and which was rejected both by the Special Master and this Court. The taking of any additional water required by petitioner from the Hudson River can be readily and efficiently integrated with and will form a natural extension of the existing water supply facilities of petitioner.

16. Intervenor denies the averments of paragraph 16 of the petition.

17-18. Intervenor avers that under reciprocal legislation between New Jersey, New York and Pennsylvania (Chapter 58, Section 18-1, New Jersey Statutes, 1944; New York Laws 1943, Chapter 709; Pennsylvania Act of May 21, 1943, P. L. 422), before the New York Water Power and Control Commission could lawfully consider the plan and project submitted to it, the latter was required to give notice to the Water and Power Resources Board of Pennsylvania and to the board or commission of New Jersey corresponding to the two named boards of New York and Pennsylvania. No such notice was given to the Water and Power Resources Board of Pennsylvania, nor was any opportunity afforded to such board to present testimony and arguments

in accordance with Chapter 709 of the New York Laws of 1943.

19. Intervenor admits that petitioner seeks a modification of the formula contained in this Court's decree of May 25, 1931, but denies that there should be a modification of the formula. Intervenor avers that the reservoirs now being built as averred in paragraph 8 of the petition have not as yet been put into operation, and that for this reason the formula contained in this Court's decree has not as yet been put to a test. It is premature to ask that the formula be modified until the practical results of the formula can be ascertained from the actual working thereof.

20. Intervenor admits that the formula in this Court's decree is as quoted in paragraph 20 of the petition.

21. Intervenor admits that petitioner seeks modification of the water release formula contained in this Court's decree of May 25, 1931, by substituting the formula contained in paragraph 21 of the petition. It avers that the formula stated in the petition is substantially the formula contained in the reciprocal legislation between New Jersey, New York and Pennsylvania, to which reference was made in the answer to paragraphs 17-18. The formula appears in Section 6 of the Pennsylvania Act of May 21, 1943, P. L. 422. However, intervenor avers that reciprocal legislation relating to the controlled rate of the natural flow of an interstate navigable river and its waters constitutes a compact between the states enacting such reciprocal legislation; and as such, requires as a prerequisite to its validity, the approval of the Congress of the United States. No such approval has been given to the reciprocal legislation to which reference has been made. By the express terms and provisions of these reciprocal acts, rights existing at the time of their passage to divert waters from the Delaware River were not to be impaired or affected, and this

statutory preservation of existing rights applied to the rights determined by this Court by its decree of May 25, 1931.

22. Intervenor has no information sufficient to enable it to form an opinion as to whether a substitution of the water release formula set forth in paragraph 21 of the petition for the water release formula contained in this Court's decree of May 25, 1931, will require petitioner to release more water as set forth in paragraph 22 of the petition, especially for the reason that the averment is made, as intervenor understands it, upon the assumption that this Court will permit petitioner to increase its diversion from the Delaware River as requested in the petition. Furthermore, intervenor avers that petitioner should not be relieved of responsibility in connection with any diversion from the Delaware River or its tributaries originating downstream from the dams and reservoirs of petitioner for the reason that, as a result of the diversion of 440 million gallons daily from the watershed of the Delaware River, the conditions at the dams and downstream from the dams are inseparable; and there is a duty imposed by the decree of this Court upon every diverter of Delaware River water to participate in the protection of the entire river from any injurious effect of any diversion.

23. Intervenor is unable to admit or deny the averments of paragraph 23 of the petition except as they relate to Pennsylvania; and without further information, intervenor is unable to concede that the released water formula proposed by the petitioner is and would be preferable to the existing water release formula contained in this Court's decree. Intervenor further avers that the formula prescribed by this Court in its decree of May 25, 1931 was formulated to meet the present and reasonable future water needs of all three states, and that the petition does not on its face show that any change in that formula is necessary for the present.

24. Intervenor admits the averment of paragraph 24 of the petition.

25. Further answering, intervenor avers that above the Delaware-Pennsylvania State Line, the Delaware River drains an area of 10,444 square miles, of which total, 2389 square miles are within the State of New York, 1979 square miles are within the State of New Jersey, and the remaining 6076 square miles are within the Commonwealth of Pennsylvania. It is apparent that the Commonwealth of Pennsylvania is entitled to paramount consideration in apportioning the waters of the Delaware River.

26. Further answering, intervenor avers that there are located in the basin and watershed area of the Delaware River many cities, towns and villages, as well as vast agricultural and industrial areas. This great agricultural, industrial and municipal community has shown a substantial and continuous growth over a period of many years which was intensified during World War II, and is now being tremendously increased by the erection of great steel mills and other manufacturing concerns at and in the neighborhood of Morrisville, Pennsylvania. It is of vital importance to the continued growth and prosperity of southeastern Pennsylvania that the waters of the Delaware River shall be available in adequate quantity and suitable quality for the future reasonable water needs and requirements thereof.

27. Further answering, intervenor avers that the City of Philadelphia, which is the third city in population in the United States, has for many years obtained the major part of its water supply from the Delaware River; that the growth of the City has been continuous; and that the City will necessarily depend more and more upon the waters of the Delaware River Basin for its constantly increasing demands for water for domestic, municipal, sanitary, industrial and power purposes. New York City, by its peti-

tion, seeks almost to double its diversion of the purest and best water of the entire watershed, the result of which will necessarily be an impairment of the quality as well as a lessening of the quantity of the water of the Delaware River all the way to tidewater.

28. Further answering, intervenor avers that the Delaware River Basin comprises a water supply area that is competitive because it is available to all four bordering states and the amount of water divertible therefrom without injury must be definitely limited. Intervenor has always insisted that the waters of this basin must be fairly and equitably apportioned between the states in accordance with their present and reasonable future needs; and further that New York should not be permitted to take more than its fair and equitable share to the detriment and irreparable damage of Pennsylvania.

29. Further answering, intervenor avers that this Court by its decree of May 25, 1931, held that the allowance of 440 million gallons daily of Delaware River water to the State and City of New York did not constitute a prior appropriation and did not give the State and City of New York any superiority of right over the Commonwealth of Pennsylvania and the State of New Jersey in their enjoyment and use of the Delaware River and its tributaries.

30. Further answering, intervenor avers that, subsequent to the entry of this Court's decree of May 25, 1931, the comparative situation as between New York and Pennsylvania has not changed in favor of permitting a greater diversion to New York than that heretofore allowed by this Court, but that, if anything, the changed situation indicates that the petitioner should not have been permitted to divert to another watershed as much as 440 million gallons daily.

WHEREFORE, the Commonwealth of Pennsylvania, Intervenor herein, respectfully petitions this Court to dismiss the petition of the City of New York.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA,
Intervenor.

By ROBERT E. WOODSIDE,
Attorney General.

GEORGE G. CHANDLER,
BERNARD G. SEGAL,
Special Counsel and Solicitors for the Commonwealth of Pennsylvania, Intervenor.

Of Counsel:
WM. A. SCHNADER,
HARRY F. STAMBAUGH,
Special Counsel to Intervenor.

COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF DAUPHIN, } *ss.:*

ROBERT E. WOODSIDE, being duly sworn according to law, deposes and says that he is the Attorney General of the Commonwealth of Pennsylvania; that he is duly authorized to make this affidavit on its behalf; that he has read the above answer; and that the averments thereof so far as they are within his personal knowledge are true and correct, and that in so far as they are upon information and belief, he believes them to be true and correct.

ROBERT E. WOODSIDE.

Sworn to and subscribed before me this 14th day of May, 1952.

LUCILLE A. STROUP,
Notary Public.

(Seal)

My commission expires March 5, 1955.